

By Julie Carney, Deputy Clerk

Respondent.

# ORDER APPOINTING LIMITED RECEIVER TO LIQUIDATE AND WIND UP TRUST ACCOUNT AFFAIRS

1           The Motion for an Order Appointing a Limited Receiver to Liquidate and Wind Up Trust  
2 Account Affairs was heard this date \_\_\_\_\_ at \_\_\_\_\_ a.m by this Court, the Honorable  
3 \_\_\_\_\_ presiding. Petitioner, the People of the State of California, by and  
4 through the Commissioner of Business Oversight (Commissioner) appeared by Senior Counsel,  
5 attorney Johnny O. Vuong. Respondent, Amerilink Escrow, Inc. (Amerilink) appeared by Counsel  
6 \_\_\_\_\_.

7           This Court having considered the motion, petition, points and authorities and supporting  
8 declarations and exhibits filed in the above-captioned matter by the Commissioner, any opposition  
9 filed and upon a hearing before this Court, and GOOD CAUSE APPEARING THEREFORE:

10           IT IS ORDERED:

11           That Peter A. Davidson, of the law firm of Ervin, Cohen & Jessup, LLP, be appointed as  
12 receiver over the escrow trust funds of Amerilink, including, but not limited to, the escrow trust  
13 account(s) and the indemnity funds paid by the Escrow Agents' Fidelity Corporation, any bond or  
14 insurance policy maintained by Amerilink or which it is a beneficiary of, and all bank and escrow  
15 records pertinent thereto (collectively trust property), whether directly or indirectly, owned  
16 beneficially or otherwise by, or in the possession, custody or control of Amerilink or Vinh C. Phan  
17 (Phan), or to which Amerilink or Phan, have any right of possession, custody or control, irrespective  
18 of whomsoever holds such property, in order to obtain an adequate accounting of the trust property  
19 and trust liabilities; secure a marshaling of such property; and to forthwith begin winding up and  
20 liquidating the trust property affairs of Amerilink in accord with the provisions of the Escrow Law  
21 (Fin. Code § 17000 et seq.).

22           IT IS FURTHER ORDERED THAT:

23           1.       Peter A. Davidson (Receiver), prior to entry upon the duties described herein, take an  
24 oath to faithfully perform the duties of a receiver and to observe all of the instructions of this Court.

25           2.       The Receiver is authorized, empowered and directed:

26           (a)      To review, observe, discover and make notes regarding all the trust property of, or in  
27 the possession of Amerilink, wherever situated, including all trust accounts of Amerilink in financial  
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depository institutions and of any other trust property in which Amerilink has an interest regardless by whom it may be held on an ongoing basis pursuant to this Court's order;

(b) To retain and employ such attorney(s) to assist, advise and represent the receiver in the performance of his duties and responsibilities as the Court may approve upon written application of the receiver;

(c) To retain and employ Dominic LoBuglio, CPA, Inc. as his accountants, and such other such persons, clerical and professional, to perform such tasks as may be necessary to aid the receiver in the performance of his duties and responsibilities;

(d) To be the sole signator on all trust bank accounts and bank accounts of Amerilink;

(e) To bring such proceedings as are necessary to enforce the provisions hereof;

(f) To bring such actions as are necessary to modify the provisions hereof;

(g) To make such payments and disbursements from the trust property so taken into custody, control, and possession of the receiver or otherwise received by him, as may be necessary and advisable in discharging his duties as receiver;

(h) To preserve trust property;

(i) To institute, prosecute, defend, compromise, intervene and become a party either in his own name or in the name of Amerilink to such suits, actions, or proceedings as may be necessary for the protection, maintenance, recoupment or preservation of the trust property of Amerilink and their escrow parties, with prior court approval; and

(j) To divert, take possession of and secure all mail of Amerilink and in order to screen such mail for correspondence relating to the trust property, returning non-property mail to Phan, the president, sole shareholder and registered agent for service of process of Amerilink, and to effect a change in the rights to use any and all post office boxes and other mail collection facilities used by Amerilink.

3. The Receiver is hereby vested with, and is authorized, directed, and empowered to exercise, all of the powers of Amerilink's officers and directors or persons who exercise similar powers and perform similar duties, with respect to the trust property, whose authority is hereby

suspended; and Amerilink's officers, agents, employees, representatives, directors, successors in interest, attorneys in fact and all persons acting in the concert or participating with them, are hereby divested of, restrained and barred from exercising any of the powers herein vested in this receiver.

4. Any local, state or federal law enforcement and regulatory agency having jurisdiction over matters relating to Amerilink's business shall be entitled to review, without exception, all reports of the receiver and all books, records, and files on Amerilink in the possession of the receiver at any time during normal business hours, and to make any abstract or copies of said documents as it desires.

5. Amerilink and their respective officers, directors, agents, servants, employees, successors, assigns, affiliates, and other persons or entities under their control and all persons or entities in active concert or participation with them, and each of them, shall turn over to the receiver records, documentation, charts and/or descriptive material, which relate, directly or indirectly, to the trust property of Amerilink or otherwise belonging to their escrow transaction parties, now held by Amerilink or any of them.

6. This Court will retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered herein or to entertain any suitable application or motion by the Commissioner and/or receiver for additional relief or modification of any order made herein within the jurisdiction of this Court.

7. During the pendency of this receivership, except by leave of court, all parties to escrows held by Amerilink and any other persons seeking relief of any kind, in law or in equity, from Amerilink trust property, and all others acting on behalf of any such parties or other persons including sheriffs, marshals, servants, agents and employees are restrained from:

- (a) Commencing, prosecuting, continuing or enforcing any suit or proceeding;
- (b) Executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any trust property owned or in the possession of Amerilink or its affiliates, or the receiver appointed herein, wherever situated;

1 (c) Taking, retaining, retaking or attempting to retake possession of any trust property;  
2 (d) Withholding or diverting any trust property obligation;  
3 (e) Doing any act or other thing whatsoever to interfere with the possession of or  
4 management by the receiver herein and of the trust property, controlled by or in the possession of  
5 Amerilink or to in any way interfere with said receiver or to interfere in any manner during the  
6 pendency of this proceeding with the exclusive jurisdiction of this Court over the Amerilink trust  
7 property.

8 8. At such time as the financial condition of the property has been ascertained by the  
9 receiver and at such time as the trust property has been marshaled and all trust liabilities have been  
10 determined, the receiver shall file an application with the Court for disposition of such trust property.  
11 The application shall propose in detail the winding up and the distribution of trust funds. If  
12 necessary, the receiver shall be authorized to propose and carry out a partial distribution, retaining  
13 such funds pending final distribution as are necessary to finance any pertinent litigation or the  
14 remaining operation of the receivership.

15 9. The receiver shall be paid an hourly rate of \$495.00 for his services and shall be  
16 entitled to reimbursement for usual and customary expenses, including out-of-pocket expenditures  
17 on behalf of the receivership estate, which shall be paid from the trust funds of Amerilink, and that  
18 the State of California shall have no liability whatsoever for any costs, fees and/or out-of-pocket  
19 expenses that may result from such receivership. The receiver and any professional hired by him  
20 shall make application to this Court on a monthly basis for payment of reasonable fees and expenses  
21 incurred by the receiver or such professional and shall be entitled to payment of said fees and  
22 expenses on account as hereinafter provided. Copies of such applications to the Court shall be  
23 promptly served on all attorneys of record for parties in this action, who shall have 10 calendar days  
24 following the filing and service of such application to file any objections thereto with the Court and  
25 serve any such objections by facsimile and mail on the receiver. If no objections are filed with the  
26 Court and served within the 10-calendar day period, the receiver shall thereupon draw funds from  
27 the receivership estate sufficient to pay 100% of out-of-pocket expenses, and 100% of such fees,  
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1 including all professional fees, and other expenses such as in office copying and facsimile charges,  
2 without further order of the Court. If any objections are filed, the receiver may draw funds from the  
3 receivership estate sufficient to pay any amounts as to which there is no objection, and the Court will  
4 conduct a hearing on any objections upon motion of the receiver or the objecting party. At such  
5 hearing, the compensation of the receiver or other professional making application, as well as  
6 allowable disbursements and expenses, will be determined by the Court, and the receiver will be  
7 directed to draw funds from the receivership estate to pay 100% of the amounts so determined by the  
8 Court. Notwithstanding such interim monthly payments of fees and expenses, all fees and expenses  
9 shall be submitted to the Court for its approval by a properly noticed request for fees, stipulation of  
10 all parties or the receiver's Final Account and Report. Upon approval of the fees and expenses of the  
11 receiver or other professional, any hold back amounts still due and owing to the receiver or other  
12 professional shall be paid from the receivership estate.

13 10. The disbursement of Amerilink's trust account funds is prohibited until a  
14 reconciliation of Amerilink's account has been completed and the Commissioner has approved the  
15 reconciliation of which said approval shall not be unreasonably withheld, except to pay the costs and  
16 expenses of the receivership as provided for in paragraph 9, above.

17 11. The receiver shall not be required to file a bond with the Court in this matter.  
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20 Date: June 04, 2018

Robert J. Moss  
JUDGE OF THE SUPERIOR COURT